

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DWIGHT W. KEEFER

Petitioner,

v.

CIVIL ACTION NO. 2:10-cv-01139

MARK A. WILLIAMSON,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is the petitioner, Dwight W. Keefer's Application Under 28 U.S.C. § 2241¹ for Writ of Habeas Corpus by a Person in State or Federal Custody. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court dismiss the petition, and this civil action, without prejudice, for failure to exhaust state court remedies prior to filing the instant § 2254 petition. Neither party has filed objections to the Magistrate Judge's findings and recommendation.

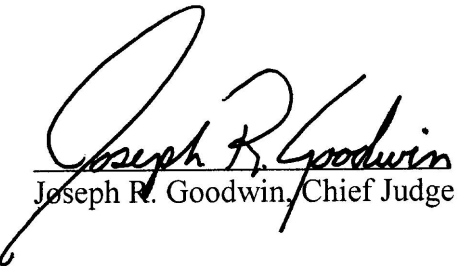
¹This action was originally filed in the United States District Court for the Northern District of West Virginia as a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. By Order entered September 22, 2010, however, this action was properly construed as a petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, because the petitioner is a state inmate challenging a conviction and sentence imposed by a state court. The petition was, by the same order, transferred to this District, because the petitioner was convicted in the Circuit Court of Jackson County, which is within the Southern District of West Virginia.

The failure to object to a magistrate judge's report may be deemed a waiver on appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. See *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **ORDERS** that the petition be **DISMISSED**, without prejudice.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: March 22, 2011


Joseph R. Goodwin, Chief Judge